



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bruce Schwiebert
Technical Manager
POET Biorefining - Leipsic
3875 State Route 65
Leipsic, Ohio 45856

Dear Mr. Schwiebert:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. CAA-05-2014-0061. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2014.

Pursuant to paragraph 38 of the CAFO, POET Biorefining – Leipsic must pay the civil penalty within 30 days of the effective date of the CAFO. Your check must display the docket number CAA-05-2014-0061.

Please direct any questions regarding this case to Mr. Tom Williams at (312)-886-0814.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Frank", is written over a horizontal line.

Nathan Frank
Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Tom Williams/C-14J
Mark Budge, Ohio Environmental Protection Agency
Robert Hodanbosi, Ohio Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2014-0061
)	
Summit Ethanol, LLC d/b/a)	Proceeding to Assess a Civil Penalty
POET Biorefining - Leipsic)	Under Section 113(d) of the Clean Air Act
Leipsic, Ohio,)	42 U.S.C. § 7413(d)
)	
Respondent.)	
_____)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Summit Ethanol, LLC, doing business as POET Biorefining - Leipsic (hereafter POET or Respondent), a corporation doing business in Ohio. Respondent owns and/or operates a facility located at 3875 State Route 65, Leipsic, Ohio 45856 (the Facility).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or legal conclusions in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Applicable Statutory and Regulatory Background

9. / The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Ohio Permit Program

12. On March 10, 2003, EPA approved Ohio Administrative Code (OAC) Rule 3745-31-05 as part of the federally enforceable Ohio State Implementation Plan (Ohio SIP). 68 Fed. Reg. 2909.

13. OAC Rule 3745-31-05 authorizes the Ohio Environmental Protection Agency (Ohio EPA) to issue federally enforceable Permits-to-Install (PTI) and Permits-to-Install and Operate (PTIO) with terms and conditions as necessary to ensure compliance with applicable laws and to ensure adequate protection of environmental quality.

Title V Permit Program

14. Title V of the Act, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.

15. In accordance with Section 502(b) of the Act, 42 U.S.C. § 7661a(b), the EPA promulgated regulations establishing the minimum elements of a Title V permit program for any air pollution control agency to administer. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

16. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.

17. On August 15, 1995, EPA approved the State of Ohio Title V operating permit program with an effective date of October 1, 1995. See 40 C.F.R. Part 70, Appendix A.

18. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

19. 40 C.F.R. § 70.6(b)(1) provides that EPA may enforce all terms and conditions in a Title V permit.

POET PTI and PTIO Requirements

20. Ohio EPA issued a Permit-to-Install, No. 03-17416, to the POET facility located in Leipsic, Ohio (the Facility) on May 29, 2008, with an effective date of May 29, 2008 (May 2008 PTI).

21. Emission Unit P007 (P007) Condition A(2)2a.i. of the May 2008 PTI requires the operation of a wet scrubber with a minimum control efficiency of 95% for volatile organic compound (VOC) emissions at P007 in order to meet Best Available Technology (BAT) control requirements.

22. Ohio EPA issued a Permit-to-Install and Operate, No. P0105657, to the Facility on December 11, 2009, with an effective date of December 11, 2009 (December 2009 PTIO).

23. Condition 2(b)(2)a.i. of the December 2009 PTIO requires the operation of a wet scrubber with a minimum control efficiency of 95% for VOC emissions at P007 in order to meet BAT control requirements.

24. Ohio EPA issued a PTIO, No. P0107812, to the Facility on June 27, 2011, with an effective date of June 27, 2011 (June 2011 PTIO).

25. Condition 3(c)(1)(a) of the June 2011 PTIO requires the use of a wet scrubber meeting a minimum control efficiency of 95% for VOC emissions at P007.

26. Ohio EPA issued a PTIO, No. P0109426, to the Facility on June 19, 2012, with an effective date of June 19, 2012 (June 2012 PTIO).

27. Condition 1(b)(1)a. of the June 2012 PTIO states that during scrubber downtime, VOC emissions shall not exceed 600 pounds per hour (lbs/hr) at P007.

28. Ohio EPA issued a PTIO, No. P0110730, to the Facility on August 23, 2012, with an effective date of August 23, 2012 (August 2012 PTIO).

29. Condition 1(b)(1)a. of the August 2012 PTIO states that during downtime of the scrubber, VOC emissions shall not exceed 600 lbs/hr at P007.

Title V Permit Requirements

30. Ohio EPA issued a Title V Permit, No. P0110380, to the Facility on December 24, 2012, with an effective date of January 14, 2013 (Title V Permit).

31. Condition 4(b)(1)a. of the Title V Permit states that during downtime of the scrubber, VOC emissions shall not exceed 600 lbs/hr at P007.

Factual Allegations and Alleged Violations

32. Respondent owns and operates an ethanol production plant located at 3875 State Route 65, Leipsic, Ohio (the Facility).

33. Respondent describes P007 as “ethanol production,” which includes mash and slurry tanks, fermenters, a beer well, a distillation column, a stripper, a rectifier, and an evaporator.

34. A scrubber and regenerative thermal oxidizer (RTO) in series control emissions from P007.

35. Emissions from P007 that bypass the scrubber are not routed to the RTO.

36. Periods of downtime at the scrubber result in emissions from P007 being directly vented to the atmosphere, in violation of P007 Condition A(2)2a.i. of the May 2008 PTL, P007 Condition 2(b)(2)a.i. of the December 2009 PTIO, and P007 Condition 3(c)(1)(a) of the June 2011 PTIO.

37. In December 2011, POET conducted a performance test at the scrubber (2011 Performance Test) which identified a VOC loading rate to the scrubber of 763.56 lbs/hr. The VOC loading rate at the scrubber is the VOC emission rate from P007 during periods of scrubber downtime. As a result, VOC emissions from P007 exceeded 600 lbs/hr during periods of scrubber downtime: from June 19, 2012, through August 22, 2012, in violation of Condition 1(b)(1)a. of the June 2012 PTIO; from August 23, 2012, through January 13, 2013, in violation of Condition 1(b)(1)a. of the August 2012 PTIO; and January 14, 2013, through the present, an ongoing violation of Condition 4(b)(1)a. of the Title V Permit.

38. On March 20, 2014, EPA issued Respondent a Notice of Violation (NOV) alleging that it violated provisions of its FESOP and Title V operating permit as described in Paragraphs 36 and 37 above.

39. On May 22, 2014, representatives of POET and EPA discussed the March 20, 2014, NOV.

Civil Penalty

40. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and the Respondent's cooperation, prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$110,000.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$110,000 civil penalty by: sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

(the check must note Respondent's name and the docket number of this CAFO.)

42. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Tom Williams at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Tom M. Williams (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

43. This civil penalty is not deductible for federal tax purposes.

44. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

45. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the

United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

47. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

48. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in Paragraph 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

49. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

50. The terms of this CAFO bind Respondent, its successors and assigns.

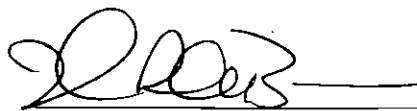
51. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

52. Each party agrees to bear its own costs and attorney's fees in this action.

53. This CAFO constitutes the entire agreement between the parties.

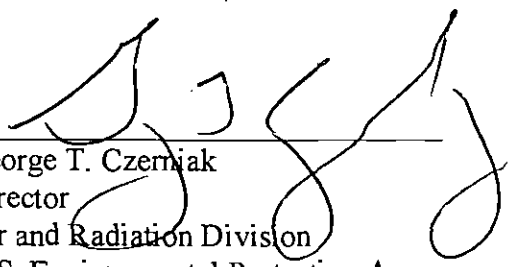
POET Biorefining – Leipsic, Respondent

9-24-14
Date


Mark A. Borer
General Manager
Summit Ethanol, LLC d/b/a POET
Biorefining – Leipsic

United States Environmental Protection Agency, Complainant

9/23/14
Date

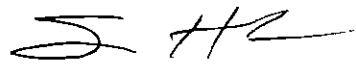

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: POET Biorefining - Leipsic
Docket No. CAA-05-2014-0061

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-30-2014
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: POET Biorefining – Leipsic
Docket No. CAA-05-2014-0061

Certificate of Service

I certify that I filed two originals of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2014-0061 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed one original to the Respondent by first-class, postage prepaid, certified mail, return receipt requested, addressed as follows:

Bruce Schwiebert, Technical Manager
POET Biorefining - Leipsic
3875 State Route 65
Leipsic, Ohio 45856

I certify that I sent a copy of the CAFO by intra-office mail to:


Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a copy of the CAFO by first-class mail to:

Mark Budge
Ohio EPA/DAPC
Northwest District Office
347 N Dunbridge Rd
Bowling Green, OH 43402

Robert Hodanbosi, Chief
Division of Air Pollution Control, Ohio EPA
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216

On the 1 day of Oct 2014.


Loretta Shaffer
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER(S):

70091680 0000 7663 9453